

1                                   BEFORE THE SHORELINES HEARINGS BOARD  
2                                   OF THE STATE OF WASHINGTON

3 WESTLAKE HOUSEBOAT OWNERS  
4 COMMITTEE,

5                                   Appellant,

6                                   v.

7 CITY OF SEATTLE and  
8 DR. ROBERT SKARPERUD,

9                                   Respondents.

SHB No. 88-44

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

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11           This is a decision on the 2420 Westlake Houseboat Owners  
12 Committee's ("Westlake") appeal of the City of Seattle's issuance of a  
13 shoreline substantial development permit (No.87-05078) to Dr. Robert  
14 Skarperud for an addition to existing moorage on Lake Union.

15           The matter concluded on July 7, 1989 with the filing of closing  
16 arguments. The hearing on the merits was held on May 5, 1989, May 10,  
17 1989, and June 21, 1989. Present for the Board at the hearing were  
18 members: Judith A. Bendor, Presiding, Wick Dufford, Hal Zimmerman,  
19 Nancy Burnett, Mary Lou Block, and Robert Schofield. Appellant  
20 Westlake was represented by Attorney J. Richard Aramburu. Respondent  
21 Skarperud was represented by attorneys John Hempelman and Paul  
22 Sikora. The City of Seattle was represented by Rule 9 Intern Carol  
23 Morris. Court reporters Lisa Alger, Janet Neer and Randi R. Hamilton,  
24 affiliated with Gene Barker & Associates (Olympia), recorded the  
25 proceedings.

1 Witnesses were sworn and testified. Exhibits were admitted and  
2 examined. Opening statements were heard and final arguments were  
3 filed. From the foregoing, the Shorelines Hearings Board, having  
4 deliberated, makes these

#### 5 FINDINGS OF FACT

##### 6 I

7 Respondent Dr. Robert Skarperud owns an open wet moorage facility  
8 at 2420 Westlake Avenue, on Lake Union, in Seattle, Washington.  
9 Currently the facility has 14 houseboats, a derelict houseboat  
10 remnant, a storage shed, and some moorage for boats. A restroom for  
11 the moorage tenants is located in houseboat No. 1. The central dock  
12 to which the houseboats and boats are moored is about 350 feet long.  
13 Beyond approximately 194 feet waterward, the dock is over state-owned  
14 tidelands. Dr. Skarperud currently leases this tideland from the  
15 Washington Department of Natural Resources.

16 The inhabited houseboats are all connected to a sewer line which  
17 in turn is connected to the City's sewer system. The houseboats are  
18 moored very close to each other. The houseboat tenants lease their  
19 space from Dr. Skarperud. Their leased area does not include the  
20 space between the houseboats. The two most waterward houseboats, Nos.  
21 14 (Thomas) and 15 (Basett), <sup>1/</sup> have views of the lake unobstructed  
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23 <sup>1/</sup>. There is no houseboat No. 2, hence the numbering.  
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1 by other houseboats. Their views are, however, currently affected by  
2 boats moored at the eastern end of the Skarperud dock.

## 3 II

4 The proposed project is for open-wet moorage with an addition of  
5 a T-shaped pier on the north side of the dock opposite houseboat No.  
6 15, to allow the mooring of two boats up to 60 feet in length. More  
7 smaller boats could also be moored there. On the south side of the  
8 dock, the three existing finger piers would be extended by six feet,  
9 and a fourth finger pier placed adjacent to Houseboat No. 14.

10 New pilings will be added for the southern finger piers and the  
11 northern T-pier. The finger pier extensions, the T-pier, and the top  
12 eight feet of the new pilings will be removable so as to allow  
13 houseboats to leave their moorage and navigate into Lake Union.

## 14 III

15 This area of Lake Union has mixed uses. To the immediate north  
16 is Gove's Cove marina where boats are moored. To the south is Western  
17 Yacht Sales marina, where some boat repairs are also done. Also  
18 nearby are offices and restaurants.

19 Parking is somewhat limited in the Westlake area. There is  
20 off-street public parking upland from the dock. The parking is  
21 available on a first-come, first-served basis. It does get crowded on  
22 summer weekends. As a result of a previous 1981 shoreline permit, Dr.  
23 Skarperud has two parking spaces at the Lake West Condominium across  
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1 Westlake Avenue. The nearest one is within 225 feet of the property;  
2 all are within 800 feet. These spaces are reserved for the Skarperud  
3 moorage and are covered by a recorded easement. These two parking  
4 spaces are also required by the City's conditions for this permit.  
5 (See Findings of Fact IV, below.)

6 We find that as proposed, the parking situation resulting from  
7 this proposal will not cause an adverse effect on the shoreline  
8 environment.

#### 9 IV

10 The City granted the shoreline substantial development permit  
11 with the following conditions:

12 Prior to Issuance of Master Use Permit  
13 (Notify Project Manager of Land Use Review  
14 Section when conditions have been fulfilled.)

- 15 1. The sewage pumpout shall be available for moorage tenant use, and  
16 prominent signs near the entrance to each moorage dock shall be  
provided to inform moorage tenants of the location of the sewage  
pumpout facilities.
- 17 2. The restrooms shall be signed and shall be available for moorage  
18 tenants use prior to occupancy of the marina.
- 19 3. Two signs shall be provided along the east side of the eastern  
20 most finger pier restricting moorage beyond the Construction  
21 limit line (see attached plan). The signs shall state that no  
22 moorage is permitted, and the property owner shall sign an  
23 agreement with the Department of Natural Resources (DNR) that if  
24 moorage occurs outside the Construction Limit line, that the  
25 lease of the State area between the pierhead line and the  
construction limit line shall be revoked by the State, and all  
moorages within that area shall be removed by the owner.

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- 1 4. The finger pier along the north property line at the north east  
2 side of the site shall be moved from the north property line to  
3 divide the moorage space between slips #7 and 8 as shown in the  
attached plan to avoid a moorage being located on the abutting  
property to the north.

4 After Issuance of the Master Use Permit

- 5 1. The timing of the pile driving shall be approved by the  
6 Department of Fisheries to avoid conflicts.
- 7 2. Signs indicating the location of the public viewing area shall be  
8 provided at a location to be determined by the Department of  
Construction and Land Use Shoreline Compliance Officer, prior to  
sign off of the final occupancy of the marina.
- 9 3. The public viewing area and landscaping as shown on the approved  
10 plan shall be provided prior to occupancy of the marina.  
11 Landscaping shall be maintained in good condition, and  
maintenance of the landscaping shall be the responsibility of the  
property owner.
- 12 4. The two parking spaces shall be signed "Reserved Parking for the  
3 Users of the Marina" and shall be provided free to the users of  
the marina. A statement shall be included in new moorage slip  
14 rental or lease agreements that two free off-street parking  
15 spaces are reserved for moorage tenant use and stating the  
location of the parking spaces.
- 16 5. Liveaboards shall only be permitted if they are connected to  
17 permanent sewer facilities. No liveaboards shall be permitted if  
sewer lines are not available, or if the boats are not connected  
to the sewer.

18 The houseboat tenants, 2420 Westlake Houseboat Owners Committee,  
19 timely appealed to this Board, which became our SHB No. 88-44.

20 v

21 We find that waterward views from the two easternmost houseboats  
22 will be affected by the proposed boat moorage, with the potential for  
23 longer, higher boats to be moored directly opposite the houseboats.

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1 Such boats also have the potential to cause noise through engine  
2 operation and user conduct. Such noise can be particularly disruptive  
3 after dark. The current houseboat leases require that these tenants  
4 respect the other houseboat tenants' rights to quiet enjoyment. We  
5 find that given the close proximity of the boats to the houseboats, a  
6 condition similar to the lease provision is appropriate. See  
7 Conclusion of Law IX, below.

#### 8 VI

9 The houseboats have to be able to leave their moorage in order to  
10 seek new moorage or possibly for major repairs. In such event, all  
11 houseboats aligned eastward would likely have to be temporarily moved.

12 We find that the project will not significantly interfere with  
13 the houseboats' navigation. There is adequate maneuvering area  
14 available.

#### 15 VII

16 We find that if permittee were to provide and adequately  
17 maintain: the restroom, sewage pump-out, sewer lines, and ensure that  
18 liveaboards were connected to sewer lines, that this project would  
19 likely not cause significant adverse impacts on water quality.

20 Unfortunately, we have concerns over the adequacy of the  
21 conditions imposed by the City, as permittee has a history of failing  
22 to adequately implement previously imposed shoreline permit  
23 conditions. In 1981 Dr. Skarperud received a shoreline substantial  
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1 development permit for this dock, which included these conditions:

2 1. The restroom facility must be complete  
3 before occupancy of the moorage slips. The  
4 restroom must be available to moorage tenants 24  
hours per day.

5 2. Department of Ecology approved sewage pump  
6 out facilities and signs warning of the  
7 illegality of raw sewage discharge must be  
8 installed before occupancy of the moorage slips.

9 3. The required parking must be provided at  
10 all times including during construction of the  
11 condominium. Evidence of availability of parking  
12 must be provided before occupancy of the moorage  
slips.

13 4. Signs indicating the two [parking] spaces  
14 are for short-term use by moorage tenants only  
15 must be posted at the spaces.

16 In fact, the restroom has not been maintained adequately and  
17 therefore has not been, in a practical sense, available. For  
18 example, in 1988 the toilet had not been functioning for at least six  
19 months. There was a pool of black water in the bottom. The restroom  
20 was dirty. Dr. Skarperud did not have a maintenance person or a  
21 manager on-site. He was doing the maintenance himself, relying upon  
22 complaints to trigger any action. He had not even checked the  
23 bathroom for over a year. There was no toilet paper, towels or soap  
24 there. Not all boat tenants were informed about the restroom's  
25 existence or provided keys.

26 During 1988 a liveaboard barge moored at the dock for several  
27 months. There is a distinct likelihood this liveaboard barge was not  
connected to the sewer line.

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1 Not all boat moorage tenants were informed about the location of  
2 the portable sewage pump. The pump-out line in the past had been  
3 disconnected. The signs prohibiting raw sewage discharge and the  
4 signs over the parking spaces in the condominiums were not at times  
5 present or legible. Not all moorage tenants were informed about the  
6 existence of this parking.

7 Numerous complaints about Dr. Skarperud's performance were  
8 received by the City. The City has only one shoreline inspector and  
9 relies on voluntary compliance and citizen complaints.

10 Dr. Skarperud's past performance does not inspire confidence.  
11 We find that additional conditions are necessary to mitigate this  
12 project. As further conditioned, adverse water quality impacts are  
3 unlikely. See Conclusion of Law IX, below.

#### 14 VIII

15 Any Conclusion of Law deemed to be a Finding of Fact is hereby  
16 adopted as such. From these Findings of Fact, the Board makes these

#### 17 CONCLUSION OF LAW

##### 18 I

19 The Shorelines Hearings Board has jurisdiction over the parties  
20 and the subject matter of the appeal. RCW 90.58.180. Appellant has  
21 the burden of proof. RCW 90.58.140(7).

##### 22 II

23 The Shorelines Hearings Board reviews a proposed development for  
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(8)



1 consistency with the Shorelines Management Act (Chapt. 90.58 RCW;  
2 "SMA), and the Seattle Shorelines Master Program ("SSMP"; Chapter  
3 24.60 City Code).

### 4 III

5 The SMP shoreline environment at the site is Urban-Stable/Lake  
6 Union ("US/LU"). Among the purposes of this environment are:

7 [the providing of] areas for controlled  
8 development and redevelopment, encouraging a  
9 variety and mixture of compatible uses while also  
maintaining the existing character, scale and  
intensity of use. 24.60.345.

10 [...] C. Develop a diversity of commercial and  
11 residential activities related to the use and  
12 enjoyment of the waterfront, the service and  
maintenance of water-dependent and water-related  
activities, and public access to the water;

13 D. Encourage multiple use concepts having a wide  
14 range of intensity while preserving view of the  
15 water from upland and adjacent properties; [...] 24.60.350

16 Appellant contends that the parking required in this permit is  
17 inconsistent with the SSMP. The parking requirements are found at  
18 SSMP 24.60.615. That provision states in pertinent part that:

19 Off-street parking - principal and accessory.

#### 20 A. General Parking Policies.

21 1. Required parking spaces and loading berths as  
22 accessory uses shall be provided for principal uses  
23 in the Shoreline District as required by Chapter  
24 24.64 or Title 23 of the Seattle Municipal Code  
except that such requirements may be waived or  
25 modified at the discretion of the Director if  
alternative means of transportation will adequately  
serve the proposed development in lieu of such

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1 off-street parking and loading requirements.  
2 Accessory parking requirements may be waived where  
3 parking to serve the proposed use is available  
4 within eight hundred feet of the proposed  
5 development.

6 2. If the number of parking spaces for a proposed  
7 substantial development which are required by  
8 Chapter 24.64 or Title 23 Seattle Municipal Code or  
9 which are proposed by the applicant will adversely  
10 affect the quality of the shoreline environment,  
11 the Director shall direct that the plans for the  
12 development be modified to eliminate or ameliorate  
13 such adverse effect.

14 The City has in essence waived the Chapter 24.64 and Title 23  
15 parking requirements by requiring two parking spaces which are within  
16 800 feet, basing their decision on the SSMP and Director's Rule 45-81  
17 which requires one space per five moorage slips.

18 We conclude that the parking fulfills the SSMP. However, given  
19 permittee's past history, further conditions are necessary to ensure  
20 the boat tenants are timely informed of the off-site parking and that  
21 the signs are maintained. See Conclusion of Law IX, below.

#### 22 V

23 Appellant contends that additional setbacks are required between  
24 the houseboats, and between the houseboats and the boat moorage,  
25 citing SSMP 24.60.535(B).

26 That section deals with new floating homes and floating home  
27 moorage, specifying minimum site areas, the water areas that can be  
covered individually and overall, and "yard" setbacks. Appellant  
contends that since respondent proposes greater intensification of

1 use, these SSMP provisions apply. Appellant concedes that the SSMP  
2 does not explicitly provide for setbacks between houseboats and  
3 boats, but contends that in all fairness 24.60.535(B)'s distances  
4 should be applied.

5 We conclude that SSMP 24.60.535(B) is not applicable to this  
6 permit. The proposed project does not involve the addition of any  
7 houseboat moorage, only the modification of existing open wet boat  
8 moorage. The intensification of use is not great, and does not  
9 trigger this provision.

#### 10 VI

11 We conclude that the proposal does not interfere with access or  
12 navigation. Therefore, RCW 90.58.020 and SSMP 24.60.650.C are not  
13 contravened.

#### 14 VII

15 Appellant contends that the permit as conditioned by the City  
16 does not satisfy the SMA, or the SMP at 24.60.525 and .670, in terms  
17 of sewage and water pollution. We share appellant's concern and have  
18 found additional conditions are necessary. Finding of Fact VII,  
19 above; Conclusion of Law IX, below. But we further conclude that as  
20 so conditioned the permit complies with the SMA and SSMP.

21 We note that if permittee were to not comply with this permit's  
22 conditions, the permit could be rescinded. RCW 90.58.140(8).  
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1 Alternately, the permittee could be subject to a civil penalty of up  
2 to \$1,000 for each day of violation. RCW 90.58.200-210;  
3 WAC 173-17-050.

#### 4 VIII

5 Appellant contends that the proposed project is inconsistent  
6 with existing uses, thereby violating the SMA, and the SMP at  
7 24.60.350, .525, .535 and .650.

8 The proposed project would increase open wet moorage for boats  
9 in the Urban Stable/Lake Union environment. This is a preferred use.  
10 SSMP 24.60.525.E.1. The proposal also increases recreational  
11 opportunities. SSMP 24.60.525.F.6. It provides for activities for  
12 the use and enjoyment of the water, conforming with SSMP  
13 24.60.350.D. Moreover it promotes a multiple use of this site, while  
14 not blocking views of the "upland or adjacent properties."<sup>2/</sup>  
15 Therefore, 24.60.350(E) is not controvened. We find no basis for  
16 appellant's other contentions.

17 Understandably, appellant houseboat moorage tenants want to have  
18 their waterward views preserved. However, they have not cited any  
19 provision of the SSMP or SMA supporting their absolute right to have  
20 such views, particularly when the project being challenged would  
21 increase a preferred, water-dependent use and their views are already  
22 affected by smaller boats that moor at the facility.

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24 2/. For purposes of the SSMP, the Skarperud houseboat moorage and  
25 the boat moorage are all "one property".

6 FINAL FINDINGS OF FACT,  
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IX

We conclude that the permit is consistent with the SSMP and SMA provided the following conditions are added:

Terms:

"permit" includes all conditions, including those previously imposed by the City when approving this permit.

"Moorage" means boat moorage east of the houseboats.

"Tenant" means boat moorage tenants and any sub-leasees.

"Inform" means at a minimum in writing.

1. Permittee has an affirmative duty at all times to maintain and operate the boat moorage and all required facilities and equipment in a clean, orderly and functioning manner. All required signs shall remain visible and legible.
2. No construction shall be allowed until the City has stated in writing that the final design complies with the shoreline permit.
3. No boat moorage is allowed after construction until the City has inspected the facility and states in writing that the facility complies with this shoreline permit.
4. After construction, no individual boat moorage is allowed until a written, dated lease/agreement (hereafter "lease") is received, signed by the proposed tenant. Each such lease shall contain verbatim all permit conditions, and a statement that tenant's violation of any permit condition subjects the lease to termination.
5. Permittee shall keep all houseboat tenants and boat tenants informed about his address and telephone number, and shall keep such information current. Permittee shall also keep these tenants

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1 informed about the names and addresses of any  
2 person with whom the permittee has arranged to  
3 perform any permit conditions. No individual  
boat moorage is allowed until each tenant is so  
informed.

- 4 6. A bathroom shall be provided on-site for tenants,  
5 to include a toilet, shower and sink at a  
6 minimum. Proper maintenance and operation is  
7 required which shall include the provision of  
8 toilet paper, soap and towels (or other means to  
9 dry hands). If the bathroom is kept locked, a  
key shall be provided to each tenant, which shall  
be provided prior to the tenant's mooring. This  
facility shall be available 7 days a week, 24  
hours a day, 365 days per year.
- 10 7. A sewage pump-out system shall be provided  
11 on-site and be available 7 days a week, 24 hours  
12 per day, 365 days per year. If a portable pump  
13 is part of the pump-out system, instructions for  
14 its use shall be provided to each tenant in  
writing with the lease, a set of instructions  
kept in the storage area, and if the storage area  
is kept locked, a key shall be provided to each  
tenant. All shall be provided prior to the  
tenant's mooring.
- 15 8. No pollution including sewage and trash shall be  
16 discharged into the waters of the state.
- 17 9. All boat tenants shall respect the houseboat and  
18 other boat tenants right to quiet enjoyment of  
their moorage.
- 19 10. No liveaboards shall be allowed absent prior  
20 written approval by permittee which states that  
21 he has inspected and confirmed that the boat is  
connected to a sewer line. Such boats shall  
remain connected to the line so long as there are  
liveaboards.
- 22 11. The entire moorage shall be inspected and  
23 necessary maintenance done no less than weekly to  
24 ensure compliance with this permit. A  
25 weatherproof inspection log shall be posted where  
it can be seen by any houseboat and boat moorage

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1           tenant. The log shall be completed  
2           contemporaneously by the person(s) doing the  
3           inspection and maintenance, to include their  
4           name, date and time of inspection, and the items  
5           inspected, enumerating specifically on the log  
6           the signs, the restroom, the sewage pump-out  
7           system, and connections for liveaboards.

- 8  
9           12. Permittee shall keep written records  
10           demonstrating compliance with this permit (e.g.  
11           Nos. 4, 5, 6, 7, 10, 11, above). These records  
12           shall be available to the City for inspection,  
13           and shall be retained for a minimum of three  
14           years.

15           Permittee shall quarterly file with the City a  
16           [signed, sworn] statement that he has complied  
17           with all permit conditions.

- 18           13. If the above conditions conflict with the  
19           conditions imposed by the City, these conditions  
20           govern.

21           The permittee is responsible at all times for compliance with  
22           this permit. This legal duty is non-delegable.

23           None of these conditions contained in this Order otherwise  
24           restricts the City's other powers to take enforcement action.

25           X

26           Any Finding of Fact deemed to a Conclusion of Law is hereby  
27           adopted as such. From these Conclusions of Law, the Board enters this

28           ; FINAL FINDINGS OF FACT,  
29           CONCLUSIONS OF LAW AND ORDER

30           SHB No. 88-44

(15)

ORDER

The shoreline substantial development permit issued by Seattle to Dr. Robert Skarperud with conditions, and As Further Conditioned Herein is AFFIRMED. The matter is Remanded to the City of Seattle for the issuance of a permit consistent with this Opinion.

DONE this 1st day of November, 1989.

SHORELINES HEARINGS BOARD

Judith A. Bendor  
JUDITH A. BENDOR, Presiding

Wick Dufford  
WICK DUFFORD, Member

Harold S. Zimmerman  
HAROLD S. ZIMMERMAN, Member

Nancy Burnett  
NANCY BURNETT, Member

Mary Lou Block  
MARY LOU BLOCK, Member

Robert C. Schofield  
ROBERT SCHOFIELD, Member